

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2411 of 1986

AND

SPECIAL CIVIL APPLICATION No 2412 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PATEL MAFATLAL JETHALAL

Versus

STATE OF GUJARAT

Appearance:

MR BA SURTI for Petitioner

MR ND GOHIL for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 10/12/96

C.A.V. JUDGEMENT

1. In both these Special Civil Applications not only the parties are common, but the facts and grounds raised therein are also common, and as such, the same are being disposed of by this common order.

2. The facts are being taken from Special Civil

Application No.2411 of 1986 as agreed by both the counsel for the parties.

3. The petitioner is doing the business of Mustard seeds for which the petitioner is holding the licence No.H/193/81. On 6-7-1984, the respondent no.3 seized the petitioner's goods namely 74.32 quintals of mustard seeds. The petitioner was served with a showcause notice for the proceedings under sec. 6(A) of the Essential Commodities Act, 1955 (hereinafter referred to as the Act, 1955) for the confiscation of seized mustard seeds. The petitioner submitted objections to the showcause notice. The respondent no.2 under its order dated 9-9-1984 ordered for confiscation of the seized mustard seeds of 74.32 quintals. The petitioner being aggrieved of the aforesaid order preferred an appeal before the respondent no.1. The respondent no.1 partly allowed the appeal and passed the order to confiscate 10 quintals of mustard seeds instead of 74.32 quintals of mustard seeds as ordered by the respondent no.2. Hence this Special Civil Application.

4. In addition to the aforesaid two orders of the respondents no.1 and 2, the petitioner has further challenged in this Special Civil Application, the notifications of the Government dated 6-1-1984 and 2-2-1984.

5. The notification dated 6th January, 1984 has been issued by the respondent in pursuance of sub-clause (1) of Clause 24 of Gujarat Essential Articles (Licensing, Control & Stock Declaration) Order, 1981. It has been provided under this order that every licence holder shall, with effect from 6th January, 1984 furnish to the Collector of the District or as the case may be to Food and Civil Supplies Controller, Ahmedabad, information regarding sale including agreement to sell, disposal, delivery or distribution of edible oil seeds or as the case may be edible oil outside the State of Gujarat in the form appended hereto in duplicate in such a number so as to reach the aforesaid officer within forty eight hours before moving such edible oil seeds or edible oil from the place where it is stored with a view to sell, including agreement to sell, dispose of or delivery or to distribute the same outside the State of Gujarat.

6. Vide order dated 2nd February, 1984, the earlier order dated 6th January, 1984 has been amended.

7. The learned counsel for the petitioner contended that the notifications dated 6th January, 1984 and 2nd

February, 1984 are arbitrary and have no rationality whatsoever. It causes unnecessary inconveniences to the licence holders to carry out the mandate contained therein. It has next been contended that the confiscation of the mustard oilseeds made of 10 quintals of the petitioner is illegal and arbitrary. Lastly, the counsel for the petitioner contended that the orders dated 6th January, 1984 and 2nd February, 1984 are bad in law as the approval thereof has not been taken by the State of Gujarat from the Central Government.

8. On the other hand, the counsel for the respondents contended that it is a case where the petitioner has made the contravention of the order dated 6th January, 1984 as amended by the order dated 2nd February, 1984 and as such, the confiscation which has been ordered by the authority is not perverse or arbitrary. It has next been contended by the counsel for the respondents that the orders dated 6th January, 1984 and 2nd February, 1984 have been issued under Clause 24 of the Gujarat Essential Articles (Licensing, Control & Stock Declaration) Order, 1981 by the Government for which no approval of Central Government is required. The approval or concurrence of the Central Government is required to the order which has been framed under sec.3 of the Act, 1955 and these orders are not being framed under the said section.

9. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. The learned counsel for the petitioner has not disputed that the petitioner has contravened the order dated 6th January, 1984 as amended by the order dated 2nd February, 1984. Only in case these two orders are declared to be invalid by this court then only it can be said that he has not made the contravention, but not otherwise. So the substantial grievance of the petitioner is against the order dated 6th January, 1984 as amended by the order dated 2nd February, 1984.

10. Firstly, I may deal with the contention of the learned counsel for the petitioner that the orders dated 6th January, 1984 and 2nd February, 1984 are bad in law as the same has been made without approval or concurrence of the Central Government.

11. The Gujarat Essential Articles (Licensing, Control & Stock Declaration) Order, 1981 (hereinafter referred to as the Order, 1981) undisputedly has been made in exercise of the powers conferred by sec.3 of the Act, 1955 and with the prior concurrence of the Central

Government. Clause 24 of the Order, 1981 empowers the State Government, the Director of Civil Supplies, the Director of Food, the Collector of a District or any licencing authority to issue the directions to dealers or producers in accordance with the provisions of this order and for ensuring fair and equitable distribution of the essential article by general or special order, issue to any dealer or producer or class of dealers or producers such directions regarding maintenance of accounts, maintenance of stocks, storage, sale submission of returns, furnishing information, display of prices, issuance of invoice or cash memo, weighment, disposal, delivery or distribution of any essential article as it or he may deem fit.

12. Sub-clause (2) of Clause 24 of the Order, 1981 further provides that every dealer or producer to whom any direction is issued under sub-clause (1) shall comply with such direction. Clause 24 of the Order, 1981 nowhere provides that any order passed by the authorities as given out therein has to be made only with prior concurrence of the Central Government. I find sufficient merits in the contention of the counsel for the respondents that the order issued under Clause 24 of the Order, 1981 by the authority mentioned therein does not require any prior concurrence of the Central Government as this is not the order made under sec. 3 of the Act, 1955. The learned counsel for the petitioner is unable to cite any provision from the Act, 1955 or any provision from the Order, 1981 made thereunder, that any order made by the authorities specified in Clause 24 of the Order, 1981 which requires the concurrence of the Central Government. The concurrence is only required to the order framed under sec.3 or under the delegated powers as given under sec.5 of the Act, 1955 by the State Government or the Central Government and not to any order or direction made under the aforesaid provision.

13. So far as the challenge to the orders dated 6th January, 1984 and 2nd February, 1984 on the ground that they are arbitrary and not workable is concerned, it is suffice to say that this contention has no merits. From the plain reading of the order dated 6th January, 1984 as amended by the order dated 2nd February, 1984 it is clear that for maintaining the supply of essential commodities of mustard oil seeds and edible oil seeds and for their equitable distribution and availability at fair price, these orders have been made. It is necessary to mention here that the petitioner has not challenged Clause 24 of the Order, 1981. He has only challenged the orders made under the aforesaid clause. These orders only require

the licence holders to intimate to the concerned authorities of the sale or agreement to sell before 48 hours of the movement of such edible oil seeds or edible oil from this State to other States. This has been done with the object to have control over these two essential commodities and for maintenance of supply and distribution thereof at fair price. The petitioner being the licence holder is under obligation to comply with the said orders which in no manner affects his right of trade or business. The orders dated 6th January, 1984 and 2nd February, 1984 are perfectly legal and justified. The petitioner has contravened the provisions of the order which as per sub-clause (2) of Clause 24 of the Order, 1981 has to be complied with by him, and as such, the confiscation of 10 quintals of mustard oil seeds has rightly been ordered.

14. In the result, these Special Civil Applications fail and the same are dismissed. Rule discharged. Interim relief, if any, granted by this court stands vacated.

zgs/-